CANCELLED

(2)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Criminal Appeal No. 991 of 1989

Appellant: Shivbhagwan Sharma
son of Ramdayal Sharma
resident of Atargaon,
P.S. Chauki,
Tahsil Mohla,
District Rajnandgaon.

Single Bench (Criminal)

6057

Filed on 5-10-89
Raizada

5/10/89

Versus

Respondent: State of M.P.

CRIMINAL APPEAL U/S 374 (2) CODE OF CRIMINAL PROCEDURE

(28)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Shri **DILIP RAOSAHEB DESHMUKH, J.**

Criminal Appeal Number-991/1989

Shiv Bhagwan Sharma

Vs.

State of Madhya Pradesh (now State of Chhattisgarh)

PRESENT: -

Shri Anup Mazumdar, learned counsel for the appellant.
Shri Ashish Shukla, Govt. Advocate for the State.

O R A L J U D G M E N T

(Delivered on 16-06-2006)

This appeal is directed against the judgment dated 16-09-1989 in Special Case No.04/1987 delivered by Shri V.C.Agrawal, learned Special Judge, Rajnandgaon whereby the appellant was convicted under Section-3 read with Section-7 of Essential Commodities Act. for committing breach of condition 3(1) of Madhya Pradesh Food grains Dealers Licensing Order, 1965 [hereinafter referred to as the "Order 1965"] and was sentenced to undergo rigorous imprisonment for 3 months and to a fine of Rs.1,000/- and in default of payment of fine to undergo additional rigorous imprisonment for 3 months.

2. Section-2(a) of the Madhya Pradesh Foodgrains Dealers Licensing Order, 1965 is as under:-

"2. **Definitions**- In this Order, unless the context otherwise requires, -

(a) "dealer" means a person who is engaged or intends to engage in the business of purchase, sale or storage for sale of any one foodgrains in quantity of 10 quintals or more at any one time, or in quantity of 25 quintals or more at any one time in respect of all foodgrains taken together, whether on one's own account or in partnership or in association with any other person or as a Commission Agent or Arhatiya (excludes kachha Adatia) and whether or not in conjunction with any other business; but does not include a person who-
(i) stores any foodgrains produced by him by personal cultivation, and
(ii) does not engage in the business of purchase or sale of foodgrains;

3. Brief facts are that on 30-12-1986 Shri H.P.Shukla, Inspector, Food & Civil Supplies inspected the shop of the appellant situated in Village-Mohala, District-Rajnandgaon and found that the appellant was storing 135 bags of paddy weighing 92.50 quintals for sale without license. The paddy was seized vide Ex.P-3 in presence of witness Jhumuk lal PW-2. Prosecution was launched against the appellant for contravening condition No.3 of the Order, 1965. The appellant abjured the guilt and pleaded in defence that Bahadur Singh D.W.-1, Son Singh D.W.-2 and Pila lal D.W.-3 had sent the paddy for weighment to the shop of the appellant. The appellant examined the aforesaid persons in defence.

4. The prosecution examined Shri H.P.Shukla, Inspector, Food & Civil Supplies as PW-1 and Jhumuk lal as PW-2. The learned trial Judge considered the evidence in its entirety and convicted the

appellant on the ground that even if the defence of appellant was considered to be plausible as per the testimony of the defence witnesses, and the paddy sent by them to the shop of the appellant for weighment was in 125 bags and the remaining 10 bags of paddy weighing @ 75 K.G. per bag would have weighed about 7 quintals which was also in excess of the quantity of the paddy prescribed in condition 2(a) of the Order, 1965 which was 4 quintals or more.

5. Shri Anoop Mazumdar, learned counsel for the appellant has assailed the impugned judgment on the ground that the learned trial Judge not only erred in disbelieving the evidence led by the appellant but also faulted in holding that the quantity of 4 quintals or more would bring the appellant within the definition of "dealer" under condition 2(a) of the Order 1965. On the other hand, Shri Ashish Shukla, learned Govt. Advocate has argued in support of the impugned judgment.

6. Having considered the rival contentions, I have perused the record. Prosecution witness Jhumuk lal PW-2 had supported the defence version by stating in para-6 of his testimony that at the time of seizure the appellant had explained that the paddy did not belong to him but was sent to his shop for weighment. The testimony of Bahadur Singh D.W.-1, Son Singh D.W.-2 and Pila lal D.W.-3 that they had sent paddy for weighment to the shop of the appellant could also not be brushed aside as afterthought since these persons had also moved an application Ex.D-7, D-8 & D-9 to the Collector, Rajnandgaon for releasing the paddy on supurdnama on the assertion that they had

sent the paddy for weighment to the shop of the appellant. The learned trial Judge after considering the evidence led by the appellant in his defence concluded that even if the quantity of paddy sent for weighment to the shop of the appellant by the defence witnesses was excluded the possession of 7 quintals of paddy was still not explained by the appellant which was in excess of the quantity prescribed under Condition 2(a) of the Order, 1965. However, this finding of the learned trial judge is clearly erroneous as a perusal of Condition 2(a) of the Order, 1965 clearly shows that for bringing a person within the definition of dealer it has to be shown that such person is engaged in purchase or storage or sale of any food-grain in quantity of 10 quintals or more. So far as the storage of paddy by the appellant for sale is concerned, Smt. H.P.Shukla PW-1 has admitted in para-31 of his testimony that he did not mention in the statement of the appellant recorded by him that paddy was being stored by the appellant for sale. No weighment panchnama was prepared by him. No such witness was examined by the prosecution who purchased the paddy from the shop of the appellant. Thus, the finding recorded by the learned trial Judge in para-21 of the impugned judgment is clearly erroneous as even after excluding the quantity sent by Bahadur Singh D.W.-1, Son Singh D.W.-2 and Pila lal D.W.-3 for weighment the remaining quantity of paddy found in possession of the appellant does not exceed 10 quintals.

7. Having thus considered the evidence available on record in its entirety, I am of the considered opinion that while the defence of the appellant that paddy found in his possession was sent by Bahadur

Singh D.W.-1, Son Singh D.W.-2 and Pila lal D.W.-3 for weighment to his shop is plausible, the remaining quantity of paddy found in possession of the appellant does not exceed the quantity prescribed in condition-2(a) of Order, 1965. Contravention of Rule-2(a) read with Rule-3 of the Order, 1965 having not been proved, the conviction and sentence awarded by the learned trial Judge under Section-3 read with Section-7 of Essential Commodities Act therefore deserves to be set aside.

8. In the result, the appeal is allowed. Conviction of the appellant under Section-3 read with Section-7 of Essential Commodities Act and the sentence awarded thereunder by the learned trial Judge are set aside. The appellant is acquitted.

Sd/-
Dilip Raosaheb Deshmukh
Judge